

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

KIMBERLY EDELSTEIN,

Plaintiff,

vs.

JUDGE GREG STEPHENS, *et al.*

Defendants.

: Case No. 1:17-CV-305

:

: Judge Michael R. Barrett

: Magistrate Judge Karen L. Litkovitz

:

:

: **DEFENDANT’S MOTION FOR**

: **LEAVE, INSTANTER, TO**

: **SUPPLEMENT MOTION FOR**

: **JUDGMENT AS A MATTER OF LAW**

Comes now Defendant, Judge Gregory Stephens, and hereby moves this Court pursuant to Local Rule 7.2 (a)(2) for leave, Instanter, to supplement the Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial, and the Reply in support of same (collectively the “Post-Trial Motions”). The supplement is for good cause and is intended to provide the Court notice of additional authority by way of the Administrative Law Judge’s May 25, 2023, Initial Decision in Plaintiff Kimberly Edelstein’s Government Employee Rights Act (GERA) Charge of Discrimination filed with the EEOC. A copy of the proposed supplement is attached hereto as Exhibit A, and a copy of the Initial Decision is attached hereto as Exhibit B.

**I. Basis for Leave**

Judge Stephens respectfully requests leave to submit supplemental briefing to provide the Court with new information relative to the Post-Trial Motions. As this Court is aware, Edelstein also filed a GERA Charge of Discrimination against Judge Stephens

with the EEOC. Detailed procedures for GERA Charges are set forth in 29 C.F.R. 1603 et seq. Unlike Title VII and similar statutes, Charges filed under GERA proceed directly to an administrative hearing, after which the Administrative Law Judge makes a recommendation to the Commission, which issues a final determination. That determination is appealable only to the federal court of appeals. Federal district courts have no jurisdiction over GERA claims (see Doc. 31, PAGEID 319-323).

The EEOC matter proceeded to an Administrative Hearing from July 7 through July 12, 2021 (“the Hearing”), wherein the parties were Complainant Kimberly Edelstein, the plaintiff before this Court, Respondent Judge Gregory Stephens, the defendant herein, and Butler County. On May 25, 2023, Administrative Law Judge Susan Biro issued an Initial Decision (“ALJ Decision”) finding that Edelstein failed to prove her claim against Judge Stephens.

Judge Stephens recognizes that the ALJ Decision is not dispositive of any issue before this Court. However, the fact-finding and analysis contained in the ALJ Decision, issued after considering the same set of facts and nearly identical legal theories, is relevant to this Court’s consideration of three arguments contained in the Post-Trial Motions. Specifically, the ALJ Decision supports Defendant’s position that the verdict of the jury was against the manifest weight of the evidence, the verdicts were inconsistent, and the adverse inference instruction was improper, not supported by facts in the records, and prejudicial.

Additionally, courts may consider “public records, matters of which a court may take judicial notice, and letter decisions of governmental agencies.” *Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir.1999) (taking judicial notice of a decision of the Civil Service Commission referred to in plaintiff’s complaint). Here, the Court may

properly take judicial notice of and consider Judge Biro's Decision. *See Becraft v. Garden Manor Extended Care Ctr.*, No. 1:11-cv-566-HJW, 2012 U.S. Dist. LEXIS 748 (S.D. Ohio Jan. 4, 2012) (taking judicial notice of the plaintiff's OCRC filings and EEOC's letter decision).

## **II. Conclusion**

Judge Stephens submits that he has provided good cause for leave to be granted to submit supplemental briefing pursuant to Local Rule 7.2(a)(2). Accordingly, Judge Stephens respectfully requests this Court issue an Order granting him leave to file, *Instantly*, a supplement to the Post-Trial Motions and Notice of Additional Authority.

Respectfully submitted,

/s/ Linda L. Woerber  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of June 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Linda. L. Woerber

LINDA L. WOEBER (0039112)